

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Neutral Tandem-)
Missouri, LLC for Expansion of its Certificate of)
Service Authority to Provide Basic Local Exchange)
Telecommunications Service in the State of) **File No. CA-2010-0245**
Missouri and to Classify Said Services and the)
Company as Competitive)

STAFF RESPONSE

COMES NOW the Staff of the Missouri Public Service Commission and for its response, states as follows:

1. On December 31, 2009, the Commission approved a new statewide access services tariff for Neutral Tandem - Missouri, LLC ("the Company"). In the Order approving that tariff, the Commission permitted the Company to limit its access rates to three rate categories. The Staff recommended that the Commission allow a variance from the conditions imposed in the Company's certificate, and since August 28, 2009, codified in §392.361.6 RSMo Supp. 2009, that the Company cap its access rates for any given exchange to the access rate of the incumbent service carrier of that exchange, which the Commission granted. The Company was required to charge access rates corresponding to the access rates of the three large incumbent carriers in whose territories they serve. As to the territories of the approximately 40 small incumbent carriers, who each have their own access rates, the Company was permitted to charge a single access rate that is equal to the rate charged by CenturyTel. This rate is lower than the vast majority of small incumbents' access rates, but it is slightly higher than that of nine small incumbents. The Staff supported this approach as a reasonable way to simplify the

charges assessed by Neutral Tandem without permitting it to charge a price that would disadvantage other carriers.

The Commission's approval was subject to a condition that, since the tariff was statewide but the certification was not, the Company could not provide services under the tariff in small incumbent service areas until it was granted additional service territory by the Commission.

2. On February 26, 2010, the Company filed its application in this case to expand its service authority to include all Missouri exchanges. The Staff filed a Memorandum in support of that expansion and other relief the Company requested.

3. The Commission now asks the Company and the Staff to clarify the current status of the request for an access rate cap. The Commission noted that after the original certificate was granted, but prior to the Commission granting the variance, H.B. 1779 became effective and codified the access rate cap in §392.361.6 RSMo Supp. 2009. The Commission notes that §392.361.5 RSMo Supp. 2009 allows it to waive certain statutory provisions, but §392.361.6 is not among those listed. In addition, the Commission directs the Company and the Staff to explain whether the variance granted in File No. TT-2010-0099 is sufficient to remove the access cap under both the Commission's certificate and the statutory requirement.

4. The Staff believes that the variance granted in File No. TT-2010-0099 is sufficient. Although the waivers listed in §392.361.5 RSMo Supp. 2009 do not include §392.361.6, that is not the only section that gives the Commission waiver authority. As support, the Staff directs the Commission's attention to §392.420 RSMo Supp. 2009, which provides:

In the case of an application for certificate of service authority to provide basic local telecommunications service filed by an alternative local exchange telecommunications company, and for all existing alternative local exchange telecommunications companies, the commission shall waive, **at a minimum**, the application and enforcement of its quality of service and billing standards rules, as well as the provisions of subsection 2 of section 392.210, subsection 1 of section 392.240, and sections 392.270, 392.280, 392.290, 392.300, 392.310, 392.320, 392.330, and 392.340. [emphasis added]

Rules of statutory construction require that all the words in a statute be given meaning. While it could be construed that the “at a minimum” language is limited to only statutory sections between §§392.200 and 392.340, it could also be construed to permit the Commission to waive other statutory requirements when it believes it is in the public interest to do so.

5. In addition to the Commission’s waiver authority, the Commission has a separate ability to “suspend” the application of a statutory requirement, which has been in effect since 1987:

392.361.6. If the commission suspends the application of a statutory requirement under this section, it may require a telecommunications company to comply with any conditions reasonably made necessary to protect the public interest by the suspension of the statutory requirement.

In 2009, that section was amended to include the following provisions:

The exchange access rates of an incumbent local exchange company that is declared a competitive telecommunications company shall not exceed the rates that were charged at the time the company became a competitive telecommunications company. The exchange access rates of an alternative local exchange company shall not exceed the exchange access rates of the incumbent local exchange company against whom the alternative local exchange company is competing.

The inclusion of those two provisions within subsection 6 can only mean that they are either the only provisions that the Commission can suspend, or that they are the kind of provisions most susceptible to suspension with the imposition of some other safeguard

to protect the public interest. Either construction allows the Commission to suspend the application of these provisions. That is the only explanation for including the new language in subsection six, as they are repeated verbatim in §392.370 RSMo Supp. 2009:

The exchange access rates of an incumbent local exchange company that is declared a competitive telecommunications company shall not exceed the rates that were charged at the time the company became a competitive telecommunications company. The exchange access rates of an alternative local exchange company shall not exceed the exchange access rates of the incumbent local exchange company against whom the alternative local exchange company is competing.

Once again, the language of a statute should be construed to give meaning. The only explanation for the reiteration of the requirement in the section that deals with suspending the application of a statute is to highlight the fact that those provisions may be suspended, if the Commission determines that a different mechanism, which will protect the public interest, is preferable. In the present case, the Commission granted a variance (an indefinite suspension) from a requirement on the condition that the access rates charged in small incumbent territory do not exceed the CenturyTel access rate. The condition is reasonable, will protect the public and will further the goal of competition by allowing the Company to tariff three access rates instead of 43 access rates.

6. Finally, the Staff notes that the access rate cap applies to “exchange access rates of the incumbent local exchange company against whom the alternative local exchange company is competing.” Neutral Tandem offers and provides tandem switching services to any telecommunications company (including the incumbent local exchange company) willing to avail itself of Neutral Tandem’s services. As such, it does not compete with the incumbent local exchange company. It is arguable that the

provisions of §§392.361.6 and 392.370 RSMo Supp. 2009 do not apply in the first place. However, as the Company will have some access rates and as capping those rates at the CenturyTel access rates is acceptable to the Company and will, in the Staff's opinion, sufficiently protect the public, the Commission need not reach the question of whether the provisions apply.

WHEREFORE, the Staff believes the variance previously granted by the Commission is sufficient to permit Neutral Tandem to provide service on a statewide basis under its existing statewide tariffs that has only three access rate categories and continues in its recommendation that the Commission grant Neutral Tandem-Missouri, LLC's Application to expand its basic local telecommunications authority to include all Missouri exchanges, to classify the company and its services in those exchanges as competitive and to grant the Company the requested standard waivers.

Respectfully submitted,



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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 6th day of April, 2010.

A handwritten signature in black ink, appearing to be "All Day".